

## **REMARKS**

### **Status of Claims**

Claims 1, 4, 5, 8-40, and 42-44 are pending. By this Amendment, Applicant has amended claims 5, 8, and 42. Claims 1, 12-40, and 43-44 have been withdrawn from examination. Claims 4, 5, 8-11, and 42 are under examination.

### **Amendment of Claims**

Applicant has amended claim 5 by removing the phrase directed to percent homology; by changing the number of consecutive amino acids from 5 to 40; and by removing reference to at least 40%, at least 60%, and at least 80% identity. Applicant has also amended claims 8 and 42 by changing "at least one polypeptide" to "an isolated or purified polypeptide." These amendments do not add new matter and are supported by the specification, including, but not limited to, p. 9, ll. 15-22.

### **Foreign Priority Applications**

As the Office acknowledged at page 3 of the Office Action, Applicant claims foreign priority based on Canadian Patent Application Nos. 2,345,206, filed May 16, 2001, and 2,346,968, filed May 23, 2001. A stamped postcard dated indicates that Applicant filed certified copies of these applications with the Office on August 4, 2004. In response to the 35 U.S.C. § 102 rejections below, Applicant has not relied on the benefit of foreign priority, and therefore, has not provided verified English translations of the Canadian Patent Applications. See 37 C.F.R. §1.55(a)(4)(i). If the Office requires verified English translations of these applications, Applicant will certainly provide them.

*Id.*

## Objections to the Specification

In reference to item 4 listed on page 3 of the Office Action, the Office noted that trademarks are used in the application. The Office commented that trademarks should be capitalized and accompanied by generic terminology. Based on the context of each trademark, one of skill in the art would understand what each trademark means. Further, each mark is identified by the symbol, TM. If the specification is objected to on this basis, Applicant respectfully requests that the objection be withdrawn.

The disclosure was objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Office Action at 3. Applicant was required to delete the embedded hyperlink and/or other form of browser-executable code. *Id.* The paragraph at page 43, lines 23-25, of the specification has been amended to delete the embedded hyperlink. Accordingly, Applicant respectfully requests that the objection to the specification be withdrawn.

The Office also objected to the specification under 35 U.S.C. § 112, first paragraph, as allegedly failing to provide an enabling disclosure with respect to recombinant *E. coli* cells disclosed. Office Action at 4. Applicant respectfully traverses.

First, the Office refers to accession number I-2604; however, that accession number is not found in the specification. It appears that the Office intended to refer to *E. coli* cells with accession numbers I-2671 and I-2672 (see p. 4, ll. 8-11 of the specification). Second, the Office stated that a deposit of these *E. coli* cells and a declaration of deposit and assurances may satisfy the enablement requirement. Applicants submit with this Amendment a copy of a Declaration executed by Danielle Berneman attesting to the deposit of I-2671 and I-2672 in the C.N.C.M., an International

Depository Authority, and assuring compliance of the availability and permanency of the deposit.

The Office also stated that identifying information pertaining to the deposit should be added to the specification. Applicants respectfully submit that in accordance with 37 C.F.R. § 1.809(d), the specification, at p. 4, ll. 8-11, provides the accession numbers of the deposits as I-2671 and I-2672, the date of the deposits as May 23, 2001, and the name of the depository as the C.N.C.M (National Collection of Microorganism Cultures). In addition, the specification, at p. 10, l. 25 to p. 11, l. 7, provides a description of the deposited biological material. By amendment to the specification, Applicant also adds to the paragraph at page 4, ll. 8-1, the address of the depository, and adds to the paragraph at p. 10, l. 25 to p. 11, l. 7, sequence identifiers to further clarify the description of the deposited biological material. Support for these amendments can be found in the specification. These amendments do not add new matter.

The amendments to the specification and the filing of the Deposit Declaration obviate the Office's objection to the specification. Accordingly, Applicant respectfully requests that the Office withdraw its objection.

#### **Rejection under 35 U.S.C. § 112, second paragraph**

The Office rejected claim 8 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Office Action at 4. Specifically, the Office stated that the phrase, "at least one polypeptide," used in claim 8 lacks antecedent basis because claim 4 recites only one polypeptide. Applicant has amended claims 8 and 42 such that they no longer recite "at least one polypeptide as claimed in claim 4 [or 5]," but instead recite, "an isolated or purified polypeptide as claimed in claim 4 [or 5]." This

amendment obviates the rejection under 35 U.S.C. § 112, second paragraph, and Applicant respectfully requests that the Office withdraw the rejection.

#### **Rejections under 35 U.S.C. § 102**

The Office rejected claims 4, 5, 8, 9, and 42 under 35 U.S.C. § 102(a) as allegedly anticipated by Hoffman et al. (WO 2000/25728) and under 35 U.S.C. § 102(b) as allegedly anticipated by Gardner et al. (Science 1998, 282:1126-1132). Office Action at 6-7. The Office appears to have relied on Hoffman et al.'s disclosure of SEQ ID NO: 62, a 1712 amino acid polypeptide and Gardner et al.'s disclosure of hypothetical protein PFB0155c, a 507 amino acid polypeptide. Applicant respectfully traverses.

As an initial matter, it appears to Applicant that the sequence search results relied on by the Office in its rejection involving Hoffman et al. relate to a 1712 amino acid polypeptide. See Office Action at 6. However, this 1712 amino acid polypeptide appears to correspond to SEQ ID NO: 62 found at pp. 113-118 of Hoffman et al. and not to SEQ ID NO: 29 (a 2485 amino acid polypeptide found at pp. 47-54 of Hoffman et al.) or the sequence disclosed in Hoffman et al. at pp. 82-83 (a 646 amino acid polypeptide designated as SEQ ID NO: 45). Therefore, for the purpose of this rejection, Applicant will respond to this rejection based on the sequence search results provided by the Office for SEQ ID NO: 62.

Claim 4 is directed to an isolated or purified polypeptide comprising a peptide sequence corresponding to SEQ ID NO: 3. In addition, Applicant amended claim 5 such that it is now directed to an isolated or purified polypeptide comprising a peptide sequence with at least 40 consecutive amino acids identical to SEQ ID NO: 3 or a peptide sequence with at least 95% identity with SEQ ID NO: 3. Neither Hoffman et al.

nor Gardner et al. anticipate claims 4, 5, 8, 9, and 42 because the polypeptides cited by the Office are not identical to SEQ ID NO: 3, do not have a peptide sequence with at least 40 consecutive amino acids identical to SEQ ID NO: 3, and/or do not have a peptide sequence with at least 95% identity with SEQ ID NO: 3.

Based on the sequence search result provided by the Office, the polypeptide identified as SEQ ID NO: 62, disclosed by Hoffman et al., appears to have a best local similarity of 40.7% when compared to SEQ ID NO: 3. See Office Action at 6. Further, based on a second sequence search result provided by the Office, hypothetical protein PFB0155c, disclosed by Gardner et al., appears to have a best local similarity of 91.7% when compared to SEQ ID NO: 3. See Office Action at 7. Hoffman et al. and Gardner et al. fail to teach every aspect of the pending claims since neither sequence cited by the Office is identical to SEQ ID NO: 3, neither sequence has 40 consecutive amino acids identical to SEQ ID NO: 3, and neither sequence has at least 95% identity with SEQ ID NO: 3. Applicant respectfully requests that the rejections of claims 4, 5, 8, 9, and 42 under 35 U.S.C. § 102 be withdrawn.

## **Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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**Attachment:** Deposit Declaration